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COMPTROLLER GENERAL OF THE UNITED STATES
Washington 25

*Annual Leave
(accumulated)*

B-98570

June 15, 1951

The Administrator

Housing and Home Finance Agency

My dear Mr. Administrator:

Reference is made to your letter of June 4, 1951, requesting decision upon certain questions, quoted below, with respect to the application of section 1212 of the General Appropriation Act of 1950, Public Law 759, approved September 6, 1950, which section provides as follows:

"No part of the funds of, or available for expenditure by any corporation or agency included in this Act, including the government of the District of Columbia, shall be available to pay for annual leave accumulated by any civilian officer or employee during the calendar year 1950 and unused at the close of business on June 30, 1951: Provided, That this section shall not apply to officers and employees whose post of duty is outside the continental United States: And provided further, That this section shall not apply with respect to the payment of compensation for accumulated annual leave in the case of officers or employees who leave their civilian positions for the purpose of entering upon active military or naval service in the Armed Forces of the United States."

The questions presented in your letter are stated, as follows:

"1. Does the restriction apply to a lump-sum payment for 1950 accumulated leave in the case of an employee who resigns on June 25, 1951, and whose voucher, because of the 10-day lag in submission of pay rolls or other factors, is not paid until some time after June 30. In other words does the restriction require the forfeiture of that part of the lump-sum payment representing unused leave accumulated during the calendar year 1950, and not liquidated by actual payment before June 30, 1951.

"2. In the case of an employee who resigns as of the close of business on June 30, 1951, and who has been on annual leave up to and including that day, does the restriction apply to payment made

after that date for (a) the 1950 accumulated leave which he has been using up during his leave-with-pay status, or (b) the unused portion of 1950 accumulated leave.

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"It would also be helpful if you would clarify the following issues raised by the proviso in section 1212 which excepts employees whose post of duty is outside the continental United States. These questions do not involve the factor of time of payment raised above.

"1. 3 Does the restriction apply to leave which was accumulated during 1950 while outside the continental United States by an employee who returns to continental United States prior to June 30, 1951, but not in sufficient time to use up the accumulation or who is not permitted to use up the accumulation because of the pressure of work. See in this connection B-99676, January 11, 1951, question 4(b), which raises a similar question in regard to employees returning from military service.

"2. 4 Does the restriction apply to 1950 accumulated leave in the case of an employee who is ordered to a post of duty outside the continental United States prior to June 30, 1951, but who does not arrive at his post of duty until after that date."

Section 1 of the Lump-Sum Leave Act of December 21, 1944, 58

Stat. 845, provides in pertinent part:

"That whenever any civilian officer or employee of the Federal Government or the government of the District of Columbia is separated from the service or elects to be paid compensation for leave in accordance with the Act of August 1, 1941, as amended by the Act of April 7, 1942, or section 4 of the Act of June 23, 1943, he shall be paid compensation in a lump sum for all accumulated and current accrued annual or vacation leave to which he is entitled under existing law. Such lump-sum payment shall equal the compensation that such employee would have received had he remained in the service until the expiration of the period of such annual or vacation leave: * * * That the lump-sum payment herein authorized shall not be regarded, except for purposes of taxation, as salary or compensation and shall not be subject to retirement deductions."

As the right to lump-sum payment vests in the employee "whenever" he "is separated from the service," the employee's rights become fixed as of the date of his separation and are not in any way changed by the administrative delay in accomplishing payment. Accordingly, question

1 is answered in the negative.

An employee who is on leave up to the close of business on June 30, 1951, has effectively used his annual leave covering absences up to that date and hour and accordingly such leave is not "unused" at the close of business on June 30, 1951, and payment therefor may be made after that date. Question 2a is thus answered in the negative.

With respect to question 2b, the literal language of the statute, namely, "annual leave accumulated * * * during the calendar year 1950 and unused at the close of business on June 30, 1951," would require an affirmative answer; that is to say, such literal language would require that a person separated from the service at the close of business June 30, 1951, could not be paid after that time for any 1950 calendar year leave unused at that time. However, as herein-after demonstrated, it is not believed that this was the intention of the Congress in view of the inequitable and absurd result of such a construction. For instance, under such an interpretation an employee separated at any time on June 30, 1951, prior to the close of business on that day would be entitled to lump-sum payment for any unused 1950 annual leave while a person separated sometime later (ranging from minutes to hours) but at the close of business on that day would be required to forfeit such leave. In considering a prior 90-day limitation upon accruals of leave it was held by this Office that the Lump-Sum Leave Act permitted payment to an employee separated on December 31 of a calendar year for the 90 days' leave accumulated prior to that calendar year plus accruals for the current calendar year notwithstanding that had he remained in the service he would have forfeited

all annual leave in excess of 90 at the close of business on December 31 of that year. 24 Comp. Gen. 659. Accordingly, as no rights can be determined and no effect can be given to this restriction until after the close of business on June 30, 1951, it appears reasonable to conclude, and it is so concluded here, that a person separated from the service at the close of business June 30, 1951, becomes vested at that time with the right to payment for all accumulated leave to his credit at that time including leave earned during the calendar year 1950.

In decision of January 11, 1951, B-99676, 30 Comp. Gen. _____, it was held that the exception from the restriction of section 1212 in favor of those employees "whose post of duty is outside the United States" depends upon the employee's status at the close of business on June 30, 1951, when the restriction otherwise becomes effective, and that the transfer of an employee to a post of duty within the continental United States prior to July 1, 1951, would make the employee subject to this restriction. It is realized that this may result in hardship with respect to those employees who may be transferred to the continental United States at such time as will not permit the taking of the 1950 annual leave before June 30, 1951, but this is a matter which could have been, or could be controlled administratively by making the transfer earlier or deferring the transfer until after June 30, 1951. The case of civilian employees may be distinguished in this respect from the case of employees returning from military service whose military status could not be adjusted by the civilian agency to prevent the loss of leave. See question 4b of decision of

January 11, 1951, B-99676. Question 1/3 is answered accordingly.

It has been held generally that a change of official station when the person is not already at the new station does not become effective until the employee arrives at the new post of duty. 5 Comp. Gen. 337, and 874; 23 LC. 242; B-99954, December 28, 1950. Accordingly, a person who upon transfer does not arrive at his foreign post of duty until after June 30, 1951, would not come within the exception applicable to employees at a foreign post of duty and the restriction of section 1212 would require the forfeiture of any 1950 annual leave to his credit at the close of business on June 30, 1951. Question 2/4 is answered accordingly.

Sincerely yours,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States